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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 16th August, 2005:—

BILL NO. 103 OF 2005

A Bill further to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Export-Import Bank of India Act, 1981 and the National Housing Bank Act, 1987.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKINGS) ACT, 1970Amendment of
section 2.

2. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter in this Chapter referred to as the Bank Nationalisation Act),—

5 of 1970.

(a) after clause (b), the following clause shall be inserted, namely:—

‘(ba) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;’;

(b) for clause (fa), the following clauses shall be substituted, namely:—

‘(fa) “Financial Restructuring Authority” means the authority established under sub-section (1) of section 18B;

(fb) “prescribed” means prescribed by regulations made under this Act;’.

Amendment of
section 9.

3. In section 9 of the Bank Nationalisation Act,—

(a) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) the manner in which the excess number of directors shall retire under second proviso to clause (i) of sub-section (3);”;

(b) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) clauses (c) and (d) shall be omitted;

(iii) for clause (i), the following clause shall be substituted, namely:—

“(i) where the capital issued under clause (c) of sub-section (2B) of section 3 is —

(I) not more than sixteen per cent. of the total paid-up capital, one director;

(II) more than sixteen per cent. but not more than thirty-two per cent. of the total paid-up capital, two directors;

(III) more than thirty-two per cent. of the total paid-up capital, three directors,

to be elected by the shareholders, other than the Central Government, from amongst themselves:

Provided that on the assumption of charge after election of any such director under this clause, equal number of directors nominated under clause (h) shall retire in such manner as may be specified in the scheme:

Provided further that in case the number of directors elected, on or before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, in a corresponding new bank exceed the number of directors specified in sub-clause (I) or sub-clause (II) or sub-clause (III), as the case may be, such excess number of directors elected before such commencement shall retire in such manner as may be specified in the scheme and such directors shall not be entitled to claim any compensation for the premature retirement of their term of office.”.

Insertion of
new section 9A.

4. After section 9 of the Bank Nationalisation Act, the following section shall be inserted, namely:—

Power of
Reserve Bank
to appoint
additional
director.

‘9A. (1) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

(2) Any person appointed as an additional director in pursuance of this section—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

5. In section 10A of the Bank Nationalisation Act,—

Amendment of section 10A.

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss, approve and adopt” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with the provisions of this section.”.

6. After section 10A of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

Insertion of new sections 10B and 10C.

‘10B (1) There shall be attached to the balance-sheet of corresponding new bank having a subsidiary, or, subsidiaries at the end of the financial year as at which the corresponding new bank’s balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

Balance-sheet of corresponding new bank to include certain particulars as to its subsidiary.

(a) a copy of the balance-sheet of the subsidiary;

(b) a copy of its profit and loss account;

(c) a copy of the report of its Board of Directors;

(d) a copy of the report of its auditors;

(e) a statement of the corresponding new bank’s interest in the subsidiary as specified in sub-section (3);

(f) the statement referred to in sub-section (5), if any; and

(g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force,—

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank.

(b) The profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a).

10 of 1949.

10 of 1949.

(c) Where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months.

(d) Where the financial year of the subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day-to-day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank, namely:—

(a) whether there has been any, and, if so, what change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, a dividend has been declared by a corresponding new bank but has not been paid or claimed within forty-two days from the date of declaration, to, or by, any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called "Unpaid Dividend Account of ... (the name of the corresponding new bank) .".

Transfer of unpaid or unclaimed dividend to Unpaid Dividend Account.

Explanation.—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.

1 of 1956.

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.

1 of 1956.

7. After section 18 of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

Insertion of new sections 18A, 18B, 18C, 18D, 18E and 18F.

"18A. (1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

Power of Central Government to supersede Board of Directors of new corresponding bank.

(a) that, on account of circumstances beyond the control of the corresponding new bank, such bank is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act, or

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Reserve Bank of India or the Central Government under this Act or any other law for the time being in force or in discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act or any other law for the time being in force and as a result of such default the financial position of the corresponding new bank or the

administration of such bank has deteriorated, or

(c) that the affairs of the corresponding new bank are being conducted in a manner detrimental to the interest of its depositors or banking policy, or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and establish under section 18B, an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period from three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairperson and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers functions and duties which may, by or under the provisions of this Act, or any other law for the time being in force, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is re-constituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the powers exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall re-constitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairperson and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Establishment
of Financial
Restructuring
Authority.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as Financial Restructuring Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven Members to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as the Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be specified by rules made by the Central Government.

(5) The salary and allowances and other conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been established and the Chief Executive Officer appointed.

18C. (1) The Financial Restructuring Authority shall meet at such times and places and shall observe such rules and procedures in regard to transaction of business at its meeting (including quorum of such meeting) as may be specified by rules made by the Central Government.

Meeting of
Financial
Restructuring
Authority.

(2) The Chairperson, if for any reasons, is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence the person presiding shall have second or casting vote.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of —

Vacancy, etc.,
not to invalidate
proceedings of
Financial
Restructuring
Authority.

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18B, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or an Executive Director of any corresponding new bank as the Chief Executive of the bank whose Board of Directors had been superseded under that section.

Chief Executive
Officer.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or re-constitution of the Board of Directors of the corresponding new bank referred to in section 18B, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be specified by rules made by the Central Government.

(4) Subject to general superintendence, direction and management of the affairs by the Financial Restructuring Authority, the Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors had been superseded.

(5) The Chief Executive Officer shall be *ex officio* Member of the Financial Restructuring Authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

18F. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

CHAPTER III

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) Act, 1980

Amendment of
section 2.

8. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [hereafter in this Chapter referred to as the Bank (Second) Nationalisation Act],— 40 of 1980.

(a) after clause (a), the following clause shall be inserted, namely:—

“(ab) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;”;

(b) for clause (da), the following clauses shall be substituted, namely:—

“(da) “Financial Restructuring Authority” means the authority established under sub-section (1) of section 18B;

(db) “prescribed” means prescribed by regulations made under this Act;”.

Amendment of
section 9.

9. In section 9 of the Bank (Second) Nationalisation Act,—

(a) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) the manner in which the excess number of directors shall retire under the second proviso to clause (i) of sub-section (3);”;

(b) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) clauses (c) and (d) shall be omitted;

(iii) for clause (i), the following clause shall be substituted, namely:—

“(i) where the capital issued under clause (c) of sub-section (2B) of section 3 is —

(I) not more than sixteen per cent. of the total paid-up capital, one director;

(II) more than sixteen per cent. but not more than thirty-two per cent. of the total paid-up capital, two directors;

(III) more than thirty-two per cent. of the total paid-up capital, three directors,

to be elected by the shareholders, other than the Central Government, from amongst themselves:

Provided that on the assumption of charge after election of any such director under this clause, equal number of directors nominated under clause (h) shall retire in such manner as may be specified in the scheme:

Provided further that in case the number of directors elected, on or before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, in a corresponding new bank exceed the number of directors specified in sub-clause (I) or sub-clause (II) or sub-clause (III), as the case may be, such excess number of directors elected before such commencement shall retire in such manner as may be specified in the scheme and such directors shall not be entitled to claim any compensation for the premature retirement of their term of office.”.

10. After section 9 of the Bank (Second) Nationalisation Act, the following section shall be inserted, namely:—

Insertion of new section 9A.

“9A. (1) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

Power of Reserve Bank to appoint additional director.

(2) Any person appointed as an additional director in pursuance of this section—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

11. In section 10A of the Bank (Second) Nationalisation Act,—

Amendment of section 10A.

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss, approve and adopt” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with this provision of this section.”.

12. After section 10A of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

Insertion of new sections 10B and 10C.

“10B. (1) There shall be attached to the balance-sheet of corresponding new bank having a subsidiary or, subsidiaries at the end of the financial year as at which the corresponding new bank’s balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

Balance-sheet of corresponding new bank to include certain particulars as to its subsidiary.

(a) a copy of the balance-sheet of the subsidiary;

(b) a copy of its profit and loss account;

- (c) a copy of the report of its Board of Directors;
- (d) a copy of the report of its auditors;
- (e) a statement of the corresponding new bank's interest in the subsidiary as specified in sub-section (3);
- (f) the statement referred to in sub-section (5), if any; and
- (g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force,— 10 of 1949.

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank.

(b) The profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a). 10 of 1949.

(c) Where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months.

(d) Where the financial year of the subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as

they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day-to-day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank, namely:—

(a) whether there has been any, and, if so, what change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, a dividend has been declared by a corresponding new bank but has not been paid or claimed within forty-two days from the date of declaration, to, or by, any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called "Unpaid Dividend Account of ... (the name of the corresponding bank)."

Transfer of
Unpaid or
unclaimed
Dividend to
Unpaid
Dividend
Accounts.

Explanation.—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.

1 of 1956.

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956. ”.

1 of 1956.

Insertion of new sections 18A, 18B, 18C, 18D, 18E and 18F.

Power of Central Government to supersede Board of Directors of new corresponding bank.

13. After section 18 of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

“18A.(1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

(a) that, on account of circumstances beyond the control of the corresponding new bank, such bank is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or

40 of 1980.

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Reserve Bank of India or the Central Government under this Act or any other law for the time being in force or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act or any other law for the time being in force and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated, or

(c) that the affairs of the corresponding new bank are being conducted in a manner detrimental to the interest of its depositors or banking policy, or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and establish under section 18B, an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period from three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairperson and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, or any other law for the time being in force, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is re-constituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the powers exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairperson and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as Financial Restructuring Authority.

Establishment
of Financial
Restructuring
Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven Members to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as the Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be specified by rules made by the Central Government.

(5) The salary and allowances and other conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been established and the Chief Executive Officer appointed.

18C. (1) The Financial Restructuring Authority shall meet at such times and places and shall observe such rules and procedures in regard to the transaction of business at its meeting (including quorum of such meeting) as may be specified by rules made by the Central Government.

Meeting of
Financial
Restructuring
Authority.

(2) The Chairperson, if for any reasons, is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence the person presiding shall have second or casting vote.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of —

Vacancy, etc.,
not to invalidate
proceedings of
Financial
Restructuring
Authority.

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

Chief Executive
Officer.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18B, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or an Executive Director of any corresponding new bank as the Chief Executive of the bank whose Board of Directors had been superseded under that section.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or re-constitution of the Board of Directors of the corresponding new bank referred to in section 18B, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be specified, by rules made by the Central Government.

(4) Subject to the general superintendence, direction and management of the affairs by the Financial Restructuring Authority, the Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors have been superseded.

(5) The Chief Executive Officer shall be *ex officio* Member of the Financial Restructuring Authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

Power to make
rules.

18F. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

CHAPTER IV

AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955.

Amendment of
section 20.

14. In section 20 of the State Bank of India Act, 1955 (hereafter in this Chapter referred to as the State Bank Act), in sub-section (3), the words "and thereafter until his successor shall have been duly elected" shall be omitted.

23 of 1955.

15. In section 21A of the State Bank Act, in sub-section (1), the words "and thereafter until his successor has been duly nominated" shall be omitted. Amendment of section 21A.

CHAPTER V

AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANK)
ACT, 1959.

16. In section 26 of the State Bank of India (Subsidiary Banks) Act, 1959,— Amendment of Act 38 of 1959.
- (a) in sub-section (2), the words "and thereafter until his successor is duly elected" shall be omitted;
- (b) in sub-section (2A), for the words "and thereafter until his successor shall have been duly nominated or appointed", the words "and thereafter until his successor shall have been duly appointed" shall be substituted.

CHAPTER VI

AMENDMENTS TO CERTAIN OTHER ENACTMENTS

17. In section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, in sub-section (2), in clause (ii), the words "and thereafter until his successor assumes office" shall be omitted. Amendment of Act 47 of 1961.
18. In section 6 of the Export-Import Bank of India Act, 1981, in sub-section (6), the words "and thereafter until his successor enters upon his office" shall be omitted. Amendment of Act 28 of 1981.
19. In section 7 of the National Housing Bank Act, 1987, in sub-section (2), the proviso shall be omitted. Amendment of Act 53 of 1987.

STATEMENT OF OBJECTS AND REASONS

Fourteen major Indian Scheduled banks, each with deposits of rupees fifty crores or more, were nationalised in July, 1969 by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. However, the Supreme Court by a majority judgment delivered on the 10th day of February, 1970 declared the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, void. With a view to resume control over these banks, the President promulgated, on the 14th day of February, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1970. The said Ordinance was replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Subsequently, six Indian private banks, each having deposits of rupees two hundred crores or more, were nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1980, promulgated by the President, on the 15th day of April, 1980. The said Ordinance was also replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Following the merger of two of the nationalised banks there are presently 19 nationalised banks.

2. The aforesaid two Acts of 1970 and 1980 originally envisaged that the paid-up capital of these banks may be raised either by transfer from the reserve fund or by contribution by the Central Government. In 1994, the said Acts were amended to provide that the paid-up capital of these banks may be increased by such amounts as the Board of Directors of the bank may, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, raise by public issue of shares in such manner as may be prescribed, so that the Central Government shall, at all times, hold not less than 51% of the paid-up capital of each such bank. The shareholding pattern of the fifteen nationalised banks which had gone in for public issues varies from 51% to 77%. The Central Government holds the entire equity in four nationalised banks and has majority equity shareholding in fifteen nationalised banks.

3. In addition to the changes in the pattern of shareholding in nationalised banks introduced in 1994, some other provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970 and 1980 also require amendments so as to bring the operation of these banks in tune with the changed scenario and modern business practices.

4. The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2000 was introduced on 13th December, 2000 in the Lok Sabha and had lapsed due to dissolution of the 13th Lok Sabha. The proposed amendment mentioned in sub-paragraphs (b) to (h) of paragraph 5 below are broadly the same which were incorporated in the earlier Bill. However, the amendment relating to reduction of prescribed minimum shareholding of the Central Government in nationalised banks from 51% to 33% as mentioned in the earlier Bill has been omitted in the amendments proposed in the present Bill.

5. It is proposed to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, *inter alia*, to—

(a) allow one to three shareholder directors on the Board of the nationalised banks on the basis of issued capital of the bank instead of one to six directors as per existing provisions so as to provide for a more equitable representation on the Board of Directors of the nationalised banks on the basis of percentage of ownership in such banks;

(b) omit the provisions relating to mandatory nomination of directors by the Reserve Bank of India and financial institutions on the Board of nationalised banks, etc.;

(c) confer power upon the Reserve Bank to appoint one or more additional directors;

(d) increase the number of whole-time directors from two to four to have more functional directors in view of expansion of activities of the nationalised banks;

(e) empower the shareholders of nationalised banks to discuss, adopt and approve the Directors' report, the annual accounts and the balance-sheet of the bank for the period covered by such accounts at their annual general meeting;

(f) enable the banks to transfer the unclaimed dividends for more than seven years to Investor Education and Protection Fund established by the Central Government under section 205C of the Companies Act, 1956;

(g) prescribe annexing of the details of the subsidiary or subsidiaries such as balance-sheet, profit and loss accounts and reports of auditors along with the annual report of the bank;

(h) empower the Central Government to supersede, on the recommendation of the Reserve Bank of India, the Board of Directors of any nationalised bank and constitute the Financial Restructuring Authority and appoint a Chief Executive Officer of such bank.

6. The State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Export-Import Bank of India Act, 1981, and the National Housing Bank Act, 1987, provide that the part-time non-official directors on the Boards of Directors of financial institutions under the said Acts shall hold office for a period of three years or until a successor is appointed subject to a maximum period of six years. Since a large number of part-time non-official directors in banks and financial institutions continued to hold office even after expiry of their term as their successor could not be appointed in time, it is proposed to amend the said Acts so as to provide that such non-official directors will vacate their office whether their successors are appointed or not. These amendments are on the lines of the provisions for part-time non-official directors in the nationalised banks. For the workmen and officer directors, the existing provisions are proposed to be continued.

7. The Bill seeks to achieve the above objects.

NEW DELHI;
The 8th August, 2005.

P. CHIDAMBARAM.

FINANCIAL MEMORANDUM

Clause 7 of the Bill, *inter alia*, contains provisions that the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of any corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint under section 18B an authority to be known as the Financial Restructuring Authority and a Chief Executive Officer under section 18E. Similarly provisions relating to the corresponding new banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 are provided in clause 13 of the Bill. The expenditure on the Financial Restructuring Authority and the Chief Executive Officer will be borne by the concerned corresponding new bank and no expenditure is envisaged from the Consolidated Fund of India.

2. The provisions of the Bill do not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill proposes to insert new section 18F in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 which confers power upon the Central Government to make rules for carrying out the provisions of the said Act. The matters in respect of which such rules may be made relate, *inter alia*, to the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

2. Clause 13 of the Bill proposes to insert new section 18F in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, which confers power upon the Central Government to make rules for carrying out the provisions of the said Act. The matters in respect of which such rules may be made relate, *inter alia*, to the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

3. The rules made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 102 OF 2005

A Bill to repeal certain enactments and to amend certain other enactments relating to levy of cess on certain items.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

- | | |
|-------------------------------|--|
| Short title. | 1. This Act may be called the Cess Laws (Repealing and Amending) Act, 2005. |
| Repeal of certain enactments. | 2. The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof. |
| Amendment of Act 26 of 1975. | 3. The enactment specified in the Second Schedule is hereby amended to the extent and in the manner mentioned in the fourth column thereof. |
| Savings. | 4. (1) The repeal or amendment by this Act of any enactment shall not—
(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;
(b) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing; |

(c) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

(d) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

10 of 1897. (2) The mention of particular matters in sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

5. Notwithstanding the repeal of the enactments specified in the First Schedule or the amendments in the enactment as specified in the Second Schedule, the proceeds of duties levied under the said enactments immediately preceding date on which the Cess Laws (Repealing and Amending) Bill, 2005 receives the assent of the President,—

Collection and payment of arrears of duties.

(i) if collected by the collecting agencies but not paid into the Reserve Bank of India; and

(ii) if not collected by the collecting agencies,

shall be paid or as the case may be, collected and paid into the Reserve Bank of India for being credited to the Consolidated Fund of India.

THE FIRST SCHEDULE

(See section 2)

Repeals

Year	No.	Short title	Extent of repeal
1	2	3	4
1942	7	The Coffee Act, 1942	Sections 11 and 13.
1972	13	The Marine Products Export Development Authority Act, 1972	Sections 14 and 15.
1986	3	The Agricultural and Processed Food Products Export Cess Act, 1985	The whole.
1986	11	The Spices Cess Act, 1986	The whole.

THE SECOND SCHEDULE

(See section 3)

Amendments

Year	No.	Short title	Amendments
1	2	3	4
1975	26	The Tobacco Cess Act, 1975	(i) Section 4 shall be omitted. (ii) In section 5, for the words and figures "duties of excise and customs levied under sections 3 and 4 respectively", the words and figure "duty of excise levied under section 3" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

At present the export of several agricultural products are subject to levy of cess under different enactments such as, the Agricultural and Processed Food Products Export Cess Act, 1985, the Tobacco Cess Act, 1975, the Spices Cess Act, 1986, the Marine Products Export Development Authority Act, 1975, and the Coffee Act, 1942.

2. In recent years, international trade in agricultural products has become extremely challenging for India with the emergence of new competitors. Some of these competitors have a negligible domestic demand and can export almost their entire produce at very cheap rates, thus, displacing the conventional demand for Indian products in the international market. Further, many developed countries provide huge subsidies to support their domestic agriculture. These subsidies enable these developed countries to establish and corner large shares in global markets. A cess on Indian exports is a handicap to our exporters and provide other countries exporters with a competitive edge.

3. From a policy perspective, the Central Government has taken the consistent view that taxes and duties ought not to be exported. The cess levied under all the Acts referred to above is unambiguously an export tax. Imposition of such an export duty tax is clearly anomalous and runs counter to policy. It reduces competitiveness of agricultural exports and is plainly unjustifiable. The only action consistent with Government's avowed policy is to do away with the cess collected under abovesaid statutes.

4. Since the cess is levied as a duty of customs, the exporter is required to go through the rigours of all customs procedures before the commodity can be physically shipped out of the country. This entails transaction costs, delays, and compliance with procedural formalities. Most exporters have complained bitterly about these transaction costs and have strongly pleaded for altogether removing all such cess levies.

5. The enactments levying the cess do not contain any provision for grant of exemption. It is, therefore, proposed to repeal the Agricultural and Processed Food Products Export Cess Act, 1985, the Spices Cess Act, 1986, sections 14 and 15 of the Marine Products Export Development Authority Act, 1972, sections 11 and 13 of the Coffee Act, 1942; and to amend the Tobacco Cess Act, 1975, to abolish cess on the export of agricultural products levied under the respective Acts.

6. This Bill seeks to achieve the above objects.

NEW DELHI;
The 21st July, 2005.

KAMAL NATH.

FINANCIAL MEMORANDUM

The proposed Bill provides for repealing of the Agricultural and Processed Food Products Export Cess Act, 1985, the Spices Cess Act, 1986, sections 14 and 15 of the Marine Products Export Development Authority Act, 1972, sections 11 and 13 of the Coffee Act, 1942; and to amend the Tobacco Cess Act, 1975, to abolish cess on the export of agricultural products levied under the respective Acts.

No recurring or non-recurring expenditure is involved in the administration of the proposed legislation.

Bill No. 104 OF 2005

A Bill further to amend the Factories Act, 1948.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Factories (Amendment) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitution of new section for section 66 of Act 63 of 1948.

2. For section 66 of the Factories Act, 1948, the following section shall be substituted, namely:—

Further restrictions on employment of women.

“66. The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:—

(a) no exemption from the provisions of section 54 may be granted in respect of any woman:

(b) there shall be no change of shifts except after a weekly holiday or any other holiday;

(c) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M. :

Provided that where the occupier of the factory makes adequate safeguards in the factory as regards occupational safety and health, equal opportunity for woman workers, adequate protection of their dignity, honour and safety and their transportation from the factory premises to the nearest point of their residence, the State Government or any person authorised by it in this behalf may, by notification in the Official Gazette, after consulting the concerned employer or representative organisation of such employer and workers or representative organisations of such workers, allow employment of woman workers between the hours of 7 P.M. and 6 A.M. in such factory or group or class or description of factories subject to such conditions as may be specified therein."

STATEMENT OF OBJECTS AND REASONS

Section 66 of the Factories Act, 1948 prohibits employment of women in factories between 7.00 P.M. and 6.00 A.M. This section was incorporated in the Act, after India's ratification of the International Labour Organisation (ILO) Convention No. 89. The State Governments, however, have the power to vary the limits laid down under clause (b) of sub-section (1) of the said section so as to permit employment of women in any factory or class of factories, but no such authorisation can permit employment of women between 10.00 P.M. and 5.00 A.M.

2. In the recent past, many women's organisations have filed Writ Petitions in certain High Courts seeking, *inter alia*, directions for amending the Factories Act, 1948 with a view to permitting night work by women on the ground that the provisions of the Act are discriminatory and gender biased. Some of the Courts have allowed employment of women during the night shift and two High Courts have struck down clause (b) of sub-section (1) of section 66 of the aforesaid Act as unconstitutional.

3. In June, 1990, the General Conference of ILO also had adopted a Protocol relating to Convention No. 89, known as the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948. Under the provisions of the Protocol, the competent authority in a country under its national laws and regulations is authorised to modify the duration of the night shifts or to introduce exemption from the prohibition within certain limits. The Protocol has since been ratified by India and has come into effect on 21st November, 2004.

4. In order to provide flexibility in the matter of employment of women during night, it is necessary to amend section 66 of the Factories Act, 1948. It is, therefore, proposed to amend the said section so as to provide certain flexibilities. However, the occupier has to ensure certain occupational safety and adequate protection to the women so employed. The proposed amendment will also result in optimal utilisation of the installed capacity, promotion of exports and generation of employment opportunities for women.

5. The Bill seeks to achieve the above objects.

K. CHANDRA SEKHAR RAO.

NEW DELHI;
The 5th August, 2005.

P. D. T. ACHARY,
Secretary-General.